IN THE SUPREME COURT OF THE STATE OF DELAWARE

CALEB RAVIN,[1]	§	
	§	No. 243, 2021
Petitioner Below,	§	
Appellant,	§	Court Below—Family Court
	§	of the State of Delaware
v.	§	
	§	File No. CN12-06874
LYNN SPEARS,	§	Petition No. 21-16917 (N)
	§	
Respondent Below,	§	
Appellee.	§	

Submitted: January 7, 2022
Decided: February 15, 2022

Before **SEITZ**, Chief Justice; **VALIHURA** and **TRAYNOR**, Justices.

ORDER

After consideration of the parties' briefs and the Family Court record, it appears to the Court that:

(1) The appellant ("Father") filed this appeal from a Family Court order that dismissed his petition to modify custody of the parties' child. For the reasons discussed below, we reverse and remand.

[1] The Court previously assigned pseudonyms to the parties pursuant to Supreme Court Rule 7(d). The Court also granted the appellant's application to proceed *in forma pauperis*. Based upon the information provided in the application, it appears that the appellant is able to pay this Court's filing fee. *See* DEL. SUPR. CT. R. 20(h). We conclude that the application should not have been granted, and the appellant's application in any future appeal might be denied, absent changed circumstances.

(2) Father and the appellee ("Mother") are the parents of a child born in 2009 (the "Child"). In June 2013, the parties entered into a custody consent order. Under that order, the parties had joint custody; Mother had primary residential placement; and Father had visitation every weekend, with additional contact as the parties agreed, depending on Father's work schedule.[2] In 2018, after proceedings on a petition to modify custody, the Family Court awarded the parties joint custody of the Child, granted Mother primary residential placement, allowed Mother to relocate to Georgia with the Child, and granted Father visitation that included summers, winter and spring breaks, and one weekend per month.[3] Father appealed, and this Court affirmed.[4]

(3) In February 2020, Mother filed a petition for modification of custody. In July 2020, the Family Court entered an order that found Father in contempt of the existing custody order, granted Mother sole legal custody and primary residential placement, and ordered that Father would not have visitation with the Child until he completed a mental health evaluation and all recommended treatment and/or the Child reached fifteen years of age. The order also acknowledged Mother's concern that Father was making frivolous filings and ordered that the court would not accept any future filings by Father without the judge's review. Father did not appeal.

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[2] *Ravin v. Spears*, 2019 WL 7369432, at *1 (Del. Dec. 30, 2019).
[3] *Id.*
[4] *Id.*

(4) The Family Court docket reflects that no further proceedings occurred between the parties until approximately one year later when, on July 21, 2021, Father filed a petition for modification of custody. On July 29, 2021, the Family Court entered an order declining to exercise jurisdiction under 13 *Del. C.* § 1926. Father has appealed to this Court.

(5) Section 1926, a provision of the Uniform Child Custody Jurisdiction and Enforcement Act, allows a court with jurisdiction over a child custody matter under the Act to "decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum."[5] "Before determining whether it is an inconvenient forum," the court "shall consider whether it is appropriate for a court of another state to exercise jurisdiction," based upon the court's consideration of "all relevant factors," including eight factors enumerated in the statute.[6]

(6) Although the court may raise the issue of inconvenient forum *sua sponte*,[7] Section 1926 expressly provides that for the purpose of deciding whether it is appropriate for a court of another state to exercise jurisdiction, "the court shall allow the parties to submit information."[8] Here, the Family Court made its

[5] 13 *Del. C.* § 1926(a).
[6] *Id.* § 1926(b).
[7] *See id.* § 1926(a) ("The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or request of another court.").
[8] *Id.* § 1926(b).

determination under Section 1926 without giving the parties an opportunity to submit information relevant to that decision, as required by the statute. Moreover, the docket does not reflect that the parties had had any contact with the court for approximately a year preceding the court's decision, and thus it appears that the court's consideration of the factors enumerated in Section 1926 was based on factual assumptions that had no basis in recent evidence in the Family Court record. We conclude that the Family Court's decision must be reversed and the matter remanded so that Father may submit information relevant to the Family Court's determination under Section 1926. We note that this order requires the Family Court to consider only such information as is relevant to the inconvenient-forum issue; this is not an opportunity for Father to relitigate the Family Court's past custody orders. This order also does not foreclose dismissal of the petition on any other, appropriate grounds.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is REVERSED and the matter is REMANDED to the Family Court for further proceedings consistent with this order. Jurisdiction is not retained.

BY THE COURT:

/s/ Collins J. Seitz, Jr.
Chief Justice